

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**MICHAEL PRINCE**

**PLAINTIFF**

**VS.**

**CASE NUMBER: 4:13cv165-JMV**

**WASHINGTON COUNTY SHERIFF'S OFFICE,  
WASHINGTON COUNTY BOARD OF SUPERVISORS,  
SHERIFF MILTON GASTON, in his Official Capacity,  
LIEUTENANT MACK WHITE,  
in his individual and official capacity,  
DEPUTY MARSHALL BADGE NO. SO28,  
in his individual and official capacity, and  
JOHN DOES 1-10**

**DEFENDANTS**

**DEFENDANTS' MOTION TO DISMISS SOME OF PLAINTIFF'S CLAIMS  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

**COMES NOW**, Defendants, Washington County Sheriff's Office, Washington County, Mississippi, Sheriff Milton Gaston, in his official and individual capacities, and the Washington County Sheriff's Department and moves the Court for a dismissal of some or all of the claims for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), and in support thereof would show as follows:

1. On June 19, 2013, this civil action was commenced by Plaintiff filing a Complaint in the County Court of Washington County, Mississippi. Defendants removed the matter to this Court. The Complaint brings actions arising under 42 U.S.C. § 1983 and Mississippi state law claims. *See* Complaint [Doc. # 2].

2. The Washington County Sheriff's Department is not a separate legal entity subject to suit; therefore, the Complaint fails to state a claim upon which relief can be granted against it and

it should be dismissed.

3. As governmental entities under the Mississippi Tort Claims Act, MISS. CODE ANN. § 11-46-1, *et seq*, Defendants Washington County, Mississippi and Milton Gaston, in his official capacity, may not be held liable for allegations of assault and battery.

4. Under MISS. CODE ANN. §15-1-35, Plaintiff's claims of assault and battery against the individual named defendants are barred as a matter of law.

5. All claims of punitive damages against the governmental defendants should be dismissed as such damages may not be assessed against governmental entities.

6. Defendants adopt and incorporate herein by reference the Memorandum of Authorities in Support of Defendants' Motion to Dismiss Some of Plaintiff's Claims for Failure to State a Claim Upon Which Relief Can Be Granted filed contemporaneously herewith.

**WHEREFORE**, Defendants pray that some or all of the claims asserted in the Complaint be dismissed for failing to state a claim upon which relief can be granted, and for any other relief the Court deems proper in the premises.

Dated: October 1, 2013.

**Respectfully Submitted,**

*s/P. Scott Phillips, Esq.*

**P. Scott Phillips, Esq.**

**MS Bar No. 4168**

**CAMPBELL DeLONG, LLP**

**Attorney for Defendants**

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 1, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification to the following person:

Derek L. Hall    [derek@dlhattorneys.com](mailto:derek@dlhattorneys.com)

I hereby certify that I have served via ***U.S. Mail*** the foregoing to the following non-ECF participant on October 1, 2013:

Michael Duncan  
Duncan Kent, PLLC  
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Ridgeland, MS 39157

***s/P. Scott Phillips, Esq.*** \_\_\_\_\_  
**MS Bar No. 4168**  
**CAMPBELL DeLONG, LLP**  
**Attorney for Defendant**